

Chicago-Kent Law Review

Volume 65
Issue 2 *Symposium on Prevention of
Groundwater Contamination in the Great Lakes
Region*

Article 1

June 1989

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Chicago-Kent Law Review

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Recommended Citation

Chicago-Kent Law Review, *Table of Contents - Issue 2*, 65 Chi.-Kent L. Rev. i (1989).
Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol65/iss2/1>

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CHICAGO-KENT LAW REVIEW

VOLUME 65

1989

NUMBER 2

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SYMPOSIUM ON PREVENTION OF GROUNDWATER CONTAMINATION IN THE GREAT LAKES REGION

A. DAN TARLOCK
STUART L. DEUTSCH
SYMPOSIUM EDITORS

FOREWORD

A. Dan Tarlock 345
Stuart L. Deutsch

The Foreword summarizes the principal papers and comments. Three broad themes run through the articles. All of the papers and comments debate the merits of creating new regulatory institutions versus the reorientation and reinvigoration of existing ones. Most of the Canadian and United States authors also address the correct governmental level at which specific media contamination problems should be attacked. The papers also implicitly raise the need to refine groundwater property rights to conserve the resource from both mining and degradation. The Foreword discusses recent developments in groundwater law that will support more aggressive integrated quality and quantity conservation regimes.

BINATIONAL COOPERATION FOR GREAT LAKES WATER QUALITY: A FRAMEWORK FOR THE GROUNDWATER CONNECTION

George Francis 359

Groundwater issues can be addressed within the framework of the Great Lakes Water Quality Agreement; this agreement and results from measures to implement it are described. The growing scope and complexity of United States-Canadian cooperation on Great Lakes matters is noted. Interest in adopting a more comprehensive "ecosystem approach" to guide this cooperation is being fostered, and groundwater must be seen as an integral part of such an approach.

NEW DIRECTIONS FOR THE GREAT LAKES WATER QUALITY AGREEMENT: A COMMENTARY

Edith Brown Weiss 375

New provisions are needed for dispute settlement procedures and for a Great Lakes Ombudsman. The U.S.-Canada Free Trade Agreement provisions for resolving disputes provide an encouraging precedent.

**GROUNDWATER QUALITY PROTECTION:
SETTING A NATIONAL GOAL FOR
STATE AND FEDERAL PROGRAMS**

David H. Getches 387

The article reviews the need to control groundwater contamination, existing laws and recent proposals. It concludes that national groundwater protection legislation is needed but major new federal regulatory programs are not required. Beyond strengthening and expanding the existing laws capable of protecting groundwater, Congress should concentrate its efforts on developing a solid research program and providing significant financial and technical assistance to support and induce state efforts. The key to a successful national groundwater quality program is the development and enforcement of strong state aquifer protection strategies that include land use and water extraction controls.

**ALLOCATING THE GROUNDWATER
POLLUTION TASKS: A COMMENT**

Eric T. Freyfogle 429

Professor Freyfogle argues that the groundwater pollution control task is sufficiently substantial as to require responses by all levels of government and by private actors. In the end the main task will not be finding a place for pollution but finding ways to avoid generating the pollution. That task will require extensive regulation as well as the development of new ethical attitudes toward resource use.

**GROUNDWATER IN THE GREAT LAKES BASIN:
THE NATURAL SYSTEM, USE AND ABUSE, AND
POLICY IMPLICATIONS**

R.A. Hodge 439

This article provides an overview of the natural groundwater system in the Great Lakes region and the various ways that human society has both used and abused this vital component of the ecosystem. A number of regulatory implications are identified based purely on this "technical" perspective.

**GROUNDWATER CONTAMINATION IN THE
GREAT LAKES BASIN: IMPLICATIONS
FOR MULTIMEDIA REMEDIAL ACTIONS**

Alfred M. Duda 465

In commenting on Mr. Hodge's article, Dr. Duda underscores the serious consequences of the failure of our institutions effectively to restore and protect our invaluable surface water supplies. Toxic contaminants in groundwater flow into the Great Lakes system, bioaccumulate in aquatic life, and pose health threats to consumers of fish. The widespread contamination with persistent toxic substances has serious implications for the federal budget deficit in both countries because of the hundreds of billions of dollars of remedial actions needed for cleanup.

**CONTROLLING NONPOINT SOURCE WATER
POLLUTION: CAN IT BE DONE?**

Daniel R. Mandelker 479

Controlling Nonpoint Source Water Pollution: Can It Be Done? poses and answers this question. The article surveys the available land use controls to control urban runoff and agricultural pollution and the efforts of the federal government to induce states and units of local government to apply these controls. Existing efforts have had mixed success at best because the regulatory jurisdiction with the authority to regulate has the least incentive to regulate. Congress enacted a new program in 1987, but Professor Mandelker concludes that Congress has not yet found the right balance between federal incentives and federal coercion to achieve an effective response to the problem of groundwater contamination.

**COMMENTARY: USING SPECIAL WATER
DISTRICTS TO CONTROL NONPOINT
SOURCES OF WATER POLLUTION**

John H. Davidson 503

In the Clean Water Act, Congress demonstrated no inclination to deal directly with nonpoint sources of water pollution, and remedial action has been left to the individual states. Agriculture is probably the single greatest nonpoint source of pollution and any serious control program will necessarily implicate farmers and agribusiness. Special water districts are a common feature of agriculture—there are many thousands of irrigation and drainage districts—and they are uniquely well-structured to control nonpoint sources.

**REGULATION OF GROUNDWATER
CONTAMINATION IN CANADA**

Andrew J. Roman 519
Derek Ferris

This article examines and evaluates the regulation of groundwater contamination in Canada, with a primary focus on Ontario's scheme. The article opens with a discussion of private common-law actions and turns to an analysis of federal and Ontario regulations and guidelines pertaining to groundwater quality. Ontario regulations are then categorized into general and specific prohibitions against pollution of groundwater. Evaluation of the effectiveness of the regulatory scheme is found throughout the article.

NOTES

**LEADING THE HORSE TO WATER: THE
EMPLOYER'S DUTY TO BARGAIN AFTER
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Anne Frueh 555

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Cite this volume as: 65 CHI.-KENT L. REV. — (1989).

The *Chicago-Kent Law Review* is published three times a year by the students of the IIT Chicago-Kent College of Law, 77 South Wacker Drive, Chicago, Illinois 60606. Phone 312-567-5013. Volume 63 and subsequent issues are available through the *Review*. The subscription price is \$23.00 (\$26.00 foreign) for a one-year, three-issue subscription that includes the annual *Seventh Circuit Symposium*. Single issues are available for \$10.00. If the subscription is to be discontinued at expiration, notice to that effect should be sent; otherwise it will be renewed as usual. All notifications of change of address should include the old and new address and zip code.

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